IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1437 of 2000

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. D.S.SINHA
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

ORIENTAL BANK OF COMMERCE

Versus

PRAKASH P MEHTA - DIRECTOR MOUNT PROCESSORS PVT. LTD.

Appearance:

1. Misc.Civil Application No. 1437 of 2000

MR PARITOSH CALLA for MR MIHIR H JOSHI for Petitioner No. 1

MR KV SHELAT for Respondent No. 1-4

SERVED BY AFFIX.(N) for Respondent No. 5-6

MR BR GUPTA for Respondent No. 7

CORAM : THE CHIEF JUSTICE MR. D.S.SINHA
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 30/07/2002

ORAL JUDGEMENT

(Per : THE CHIEF JUSTICE MR. D.S.SINHA)

#. Heard Mr.Paritosh Calla, appearing for Mr.Mihir Joshi, the learned counsel of the applicant, and Mr.K.V.Shelat, learned counsel appearing for respondent Nos.1 to 4.

#. Asserting that the respondents are guilty of disobedience of the interim orders dated 10th July, 2000 and 17th August, 2000, passed by the Debts Recovery Tribunal, Ahmedabad, hereinafter called "the Tribunal", in Original Application No.309 of 2000, in exercise of powers conferred upon it under sub-section (12) of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, hereinafter referred to as, "the Act", the applicant urges this Court to initiate against the respondents proceedings under the provisions of the Contempt of Courts Act, 1971, and punish them suitably.

#. On hearing the learned counsels appearing for the parties, and taking into account the facts and circumstances emerging from the record, and examining the provisions of the Act, the Court is of the opinion that instant application is designed to secure implementation and enforcement of the interim orders of the Tribunal dated 10th July, 2000, and 17th August, 2000, copies whereof are appended to the application as Annexure-A and Annexure-B respectively.

#. Sub-section (12) of Section 19 of the Act provides that the Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

#. Sub-section (17) of Section 19 of the Act envisages that in case of disobedience of an order made by the Tribunal under sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

#. Sub-section (25) of Section 19 of the Act confers upon the Tribunal, plenary powers by providing that the Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.

#. Thus, clearly enough, sub-sections (17) and (25) of Section 19 of the Act, read conjointly, provide a complete code of mechanism for enforcement of the order passed by the Tribunal. The Tribunal has been fully empowered to execute its order.

#. Instead of approaching the Tribunal for execution of its orders dated 10th July, 2000 and 17th August, 2000, the applicant has rushed to this Court invoking its contempt jurisdiction for execution of the aforesaid orders passed by the Tribunal. Indeed, what the applicant wants is that this Court may act as a Court of Execution and enforce the interim orders passed by the Tribunal. It is well settled that the contempt jurisdiction cannot be a substitute for the forum for execution. See: ((1) (The) Alahar Co-Operative Credit Service Society V. Sham Lal, 1995(2) G.L.H. 550, and (2) R.N.Dey and others V. Bhagyabati Pramanik and others, (2000) 4 S.C.C. 400).

#. Following the above two decisions of the Hon'ble Supreme Court, this Court also takes the view that, in the circumstances as they obtain in the instant case, appropriate remedy for getting the order of the Tribunal executed is to approach the Tribunal itself as it has been fully clothed by the Act with the power to enforce any order passed by it.

##. For what has been said above, there is no justification for initiating contempt proceeding against the alleged contemners. Instant application is misconceived. The applicant, if so advised, may approach the Tribunal for redressal of the grievance raised herein.

##. In the result, the Miscellaneous Civil Application fails, and is hereby dismissed. Notice is discharged. No order as to costs.

(D.S.Sinha, C.J.)

(J.M.Panchal, J.)

(sunil)